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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/493,871	01/28/2000	Christopher Evans	111714-P02	2773

7590 09/22/2004

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EXAMINER

ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
	3711

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/493,871	EVANS ET AL.	
	Examiner Mitra Aryanpour	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 June 2004.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 7-11 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 7-11 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (4,147,353) in view of Sowards (4,720,095) and Ainscough et al (5,957,789).

Regarding claims 7-10, Moore shows an apparatus for holding a soccer ball, comprising: a tie down stake (tent stake 1) having a lower portion and a circular-shaped upper portion (see figure 1); a ring (S-shaped metal hook 2) on the circular-shaped upper portion, wherein the ring (2) is able to travel along a substantial portion of the circular-shaped upper portion; means for (straps 6) securing a soccer ball (8) in a minimally interfering way with kicking, the securing means comprising straps (6a, 6b, 6c, and 6d) for holding the ball (8) tied to a tether line, wherein the tether line has one section which is elastic (elongated elastic shock cord 4) and attached to the swivel connection (brass swivel 3), and another section that is inelastic (braided nylon cord 5) and attached to the securing means (straps 6), the tether line being tied at its ends to and extending between the ring and the means for securing (see figure 10); and means for enabling the tether line to rotate about its own axis (brass swivel 3). Moore is silent with regards to the use of 1) various types of stake including spiraled stakes, 2) the use of net as means for securing the ball, and 3) providing a removable swivel means.

Sowards shows an apparatus for holding a soccer ball (110), wherein the stake is a tie down stake (anchor 112) having a spiraled lower portion (helically wound lower portion 114); a circular-shaped upper portion (loop 118); a handle under the circular-shaped upper portion (handle portion 120) that is projecting from the tie-down stake (112), wherein the handle projects from the stake and is constructed and arranged for seating at ground level when the spiraled lower portion of the stake is fully inserted into the ground (see figure 10); a ring (link 128) on the circular-shaped (118) upper portion, wherein the ring (128) is able to travel along a substantial portion of the circular-shaped (118) upper portion and the ball (110) being attached directly to the ring (128). See figure 10. Additionally Sowards shows an alternative means of anchoring the training device to the ground (see figure 8), wherein the stake is substantially the same as the stake of Moore. In view of Sowards, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a spiraled-type stake with a handle for the apparatus of Moore, the motivation being, it would secure the tethered-ball assembly more securely to the ground.

Ainscough et al shows a soccer training device, having a ball (12), a tether (inelastic cord 16), a detachable link (swivel connector 20) attached to an upright (support pipe 46), (column 2, lines 51-64 and column 3, lines 30-41), wherein the upright (46) is shown to be secured to the ground (59) in several different ways, and wherein the means for securing the ball is a net (containment device 14), see figures 1, 4 and 5. In view of Ainscough, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a removable swivel-eye bolt for the device of Moore, the motivation being, in order to provide an efficient connection and additionally, for allowing the ball to freely rotate 360 degrees without

the cord winding upon itself; and it would have further been obvious to have also provided a net similar to the one shown by Ainscough for the modified device of Moore, so that the ball is able to move more freely within its confines creating a more realistic practice session.

Regarding claim 11, note the rejection of claims 7-10.

Response to Arguments

3. Applicant's arguments filed 16 June 2004 have been fully considered but they are not persuasive. With regards to applicant's remarks that the prior art of record references (Moore, Sowards and Ainscough) do not show *a synergistic solution in a minimally-interfering soccer practice tool that provides realistic ball motion and true 360 degree range of kicking ability that includes strong ground-adhering characteristics in a manner not obvious to past or even some present artisans*. The Moore reference shows a soccer practice device that has a strong ground-connection. Numerous means are well known for securing a tethered ball to the ground surface. Both Ainscough et al and Sowards show this. Sowards essentially shows substantially the same ground-securing means as claimed by applicant. With respect to providing a realistic ball motion and true 360-degree range of kicking ability with minimal interference, this is not only shown by Moore but also thought by Ainscough et al (column 1, lines 44-52).

Acknowledgement is made of the Declaration filed 15 June 2004. However, as stated before the declaration is insufficient to overcome the rejection of claims 7-11. The affidavit fails to overcome the *prima facie* case established by the applied prior art. The affidavit has failed to overcome the *prima facie* case of obviousness. There is nothing unobvious about utilizing a different shape stake, especially since it is well known in the art, to do so, depending on the ground surface the sport equipment is being used on. With regards to the means for attaching a

Art Unit: 3711

ball to a tethered line, again such is well known in the tethered ball art. With regards to the use of a removable swivel, again such is also well known. It should also be noted that all parts are capable of being removed or detached.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3711

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA
15 September 2004



MITRA ARYANPOUR
PATENT EXAMINER